

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BARBARA DIANE WARD,)
a.k.a. DIANE WARD,)
Plaintiff,) No. CIV-S-04-0448 GEB (GGH)
v.)
SUTTER UNION HIGH SCHOOL) ORDER*
DISTRICT, RYAN ROBISON,)
individually and in His)
Official Capacity; LORI)
TEXEIRA, Individually and)
in Her Official Capacity;)
and SUTTER COUNTY, DAVID)
MCFARLAND, Individually and)
in His Official Capacity,**)
Defendants.)
_____)

Pending is Defendant David McFarland (a deputy sheriff) and Defendant Sutter County's (McFarland's employer) joint motion for summary judgment on Plaintiff's federal and state claims. The essence of Plaintiff's lawsuit alleges these Defendants wrongfully

* This matter was determined to be suitable for decision without oral argument. L.R. 78-230(h).

** The caption is amended to reflect the dismissal of John Doe, who is dismissed because Plaintiff failed to file an Amended Complaint identifying John Doe within 60 days of the Status (Pretrial Scheduling) Order filed June 21, 2004. (See Status Order at 2.)

1 investigated, arrested, and imprisoned her for thievery crimes
2 suspected of having occurred at Sutter Union High School. Ryan
3 Robison (Plaintiff's supervisor who is employed as a
4 Principal/Superintendent), Lori Texeira (Plaintiff's co-worker), and
5 Sutter Union High School District (Plaintiff's employer) separately
6 filed motions for summary judgment in this action, but these
7 Defendants "authorized a request that their pending motions for
8 summary judgment be removed from this Court's calendar" because
9 "Plaintiff has reached a settlement with [them]." (Pl.'s Not. of
10 Settlement at 1-2.) In light of these parties' settlement, these
11 Defendants' motions are deemed withdrawn.

Discussion¹

I. ***Federal Claims***

A. McFarland

15 Plaintiff claims that McFarland violated her Fourth
16 Amendment right to be free from unreasonable searches when McFarland
17 installed a covert video camera to surveil a student body fund deposit
18 pouch. (Pl.'s Opp'n to Defs. Sutter County and McFarland's Mot. for
19 Summ. J. ("Pl.'s Opp'n") at xxxix-xl.) McFarland installed the
20 challenged surveillance video camera to aid him in his investigation
21 of the possible misappropriation of money from the student body fund
22 deposit pouch. This pouch was kept in the third drawer of a file
23 cabinet, located in a storage room adjacent to the administrative
24 office where Plaintiff, Texeira, Robison, and Pat Hill (another

26 ¹ "The standards applicable to motions for summary
27 judgment are well known, see, e.g., Rodgers v. County of Yolo,
28 889 F. Supp. 1284 (E.D. Cal. 1995), and need not be repeated
here." Reitter v. City of Sacramento, 87 F. Supp. 2d 1040, 1042
(E.D. Cal. 2000).

1 District employee) worked. (*Id.* ¶ 6.) That file cabinet was
2 accessible to each of these individuals, and teachers regularly
3 accessed the storage room because it housed other cabinets containing
4 materials the teachers needed. (Robison Decl. ¶¶ 15-16; Robison Depo.
5 at 108:6-20; Texeira Depo. at 163:3-18; 167:17-20; 186:3-21; Ward
6 Depo. at 42:9-21.) The door to the storage room remained open during
7 business hours. (Ward Depo. at 41:26-42:8.)

8 Plaintiff also claims that McFarland violated her right to
9 privacy under the Fourteenth Amendment when he obtained information
10 from school officials related to her wages. (*Id.* at xl.)
11 Furthermore, Plaintiff alleges that McFarland violated her Fourth
12 Amendment right to be free from unreasonable seizures when he arrested
13 her for embezzlement, grand larceny, and burglary. (*Id.* at xxxiv-
14 xxxvii.) Finally, Plaintiff alleges that McFarland violated her right
15 to equal protection by maliciously prosecuting her. (2d Am. Compl.
16 ¶¶ 34-39.)

17 **1. Invasion of Privacy**

18 a. *Surveillance Video*

19 Whether Plaintiff has an actionable privacy interest which
20 was violated by McFarland's use of the video surveillance is analyzed
21 under the Fourth Amendment's reasonable expectation of privacy
22 standard. Armendariz v. Penman, 75 F.3d 1311, 1319 (9th Cir. 1996)
23 (indicating that when the Fourth Amendment provides explicit
24 limitations on the type of government conduct challenged by plaintiff,
25 that Amendment should guide the analysis of plaintiff's claim). "A
26 Fourth Amendment search occurs when the government violates a
27 subjective expectation of privacy that society recognizes as
28 reasonable." Kyllo v. United States, 533 U.S. 27, 33, (2001).

1 "[T]he Fourth Amendment forbids warrantless videotaping of a
2 private office." United States v. Gonzalez, 328 F.3d 543, 548 (9th
3 Cir. 2003). But Plaintiff had no private work space in the storage
4 room since neither the surveilled storage room nor the file cabinet
5 holding the student body fund deposit pouch was under the exclusive
6 control of Plaintiff. (Robison Decl. ¶ 16); Gonzalez, 328 F.3d at
7 548. Even though Plaintiff contends that she subjectively believed
8 what occurred in the storage room was private, Plaintiff's subjective
9 belief was not objectively reasonable given the open nature of the
10 storage room to other school officials.² Kyllo, 533 U.S. at 33;
11 O'Connor, 480 U.S. at 717-18 (plurality opinion). Therefore,
12 McFarland's videotaping of activity in the storage room did not invade
13 Plaintiff's reasonable expectation of privacy under the Fourth
14 Amendment.

15 b. *Personal Information*

16 McFarland also seeks summary judgment on Plaintiff's
17 Fourteenth Amendment claim that he violated her right to informational
18 privacy by obtaining from Robison information about her salary and
19 wage garnishments.³ (Pl.'s Opp'n at xxxix-xl.) One of the elements
20 Plaintiff must establish to prevail on this claim is that McFarland
21

22 ² Plaintiff argues that she had a reasonable expectation
23 of privacy in the storage room because she used the storage room
24 to adjust clothing, including undergarments, and students used
25 the storage room to administer insulin injections. (Texeira
Depo. at 167:20-23; Ward Depo. at 42:9-21.) However, these
activities did not convert this area into a place where
Plaintiff's subjective expectation of privacy is recognized as
reasonable. See O'Connor v. Ortega, 480 U.S. 709, 716 (1987)
(plurality opinion).

26 ³ Robison did not disclose Plaintiff's precise salary;
27 rather, he indicated that Plaintiff's salary was the lowest on
28 the staff. (McFarland Decl. ¶ 5.)

1 obtained constitutionally protected information. See Crawford v.
2 United States Trustee, 194 F.3d 954, 958 (9th Cir. 1999) (indicating
3 that informational privacy concerns unique information that is not
4 generally made public). But Plaintiff has not shown that she has
5 recognized privacy interests in the information McFarland obtained.
6 General salary ranges for California public employees are available
7 for public review, and wage garnishments are the result of a public
8 procedure. Cal. Gov't Code § 6253(a); see generally Cal. Civ. Proc.
9 Code § 706.026(b). Thus, McFarland is granted summary judgment on
10 this claim.

11 **2. False Arrest**

12 McFarland seeks summary judgment on Plaintiff's false arrest
13 claim, contending he had probable cause to arrest Plaintiff for
14 embezzlement,⁴ grand theft,⁵ and burglary.⁶ Arrests without probable
15 cause give rise to liability under 42 U.S.C. § 1983. McKenzie v.
16 Lamb, 738 F.2d 1005, 1007 (9th Cir. 1984) (citing Gilker v. Baker, 576
17 F.2d 245 (9th Cir. 1978)). Probable cause exists when, "under the
18 totality of the circumstances known to the arresting officers, a
19 prudent person would have concluded that there was a fair probability
20 that [the] suspect had committed a crime." Peng v. Hu, 335 F.3d 970,

21
22 ⁴ Embezzlement is the fraudulent appropriation of
23 property by a person to whom it is entrusted. Cal. Penal Code
24 § 503.

25 ⁵ Grand theft is committed where money is taken by an
26 employee from his or her employer that aggregates four hundred
27 dollars (\$400) or more in any twelve consecutive month period.
28 Cal. Penal Code § 487(b) (3).

29 ⁶ Every person who enters any room or other building with
30 intent to commit grand or petit larceny or any felony is guilty
31 of burglary. Cal. Penal Code § 459.

1 976 (9th Cir. 2003) (citation omitted); see Maryland v. Pringle, 540
2 U.S. 366, 371 (2003) (holding that probable cause is determined based
3 on the facts available to the officer at the time of the arrest).

4 McFarland points to the information he had, which he
5 contends supports his position that he had probable cause to arrest
6 Plaintiff. Video surveillance of the file cabinet holding the
7 investigated student body fund deposit pouch was conducted from May 18
8 to May 28, 2003. (McFarland Decl. ¶¶ 9, 18.) On May 29, 2003,
9 McFarland and another detective interviewed Hill, Texeira, and
10 Plaintiff (sequentially) in Robison's office regarding the money
11 missing from the student body fund deposit pouch. (McFarland Decl. ¶¶
12 21, 22, 23; Zembiec Decl. ¶ 10.) McFarland formally arrested
13 Plaintiff at the conclusion of her interview. (McFarland Decl. ¶ 25.)

14 At the time McFarland arrested Plaintiff, McFarland had
15 gathered the following information:⁷

19 ⁷ Plaintiff argues that there are genuine issues of
20 material fact as to the facts listed below because (1)
21 McFarland's expert testified that McFarland did not have direct
22 or circumstantial evidence to support probable cause (Zwickey
23 Depo. at 101:7-24), (2) McFarland's police report is silent on
24 whether Plaintiff placed money into the student body fund deposit
25 pouch (Mancl Decl. ¶ 25, Exh. 24), (3) there is an alternative
post hoc explanation for what happened to the money missing from
the student body fund deposit pouch (McFarland Depo. at 185:9-
20), and (4) the Sutter County Sheriff testified that he could
not form an opinion as to probable caused based on a review of a
portion of the information presented to McFarland (Denney Depo.
at 99:14-100:19). Plaintiff's first argument fails because she
mischaracterizes Zwickey's deposition testimony. Plaintiff's
remaining arguments fail to create a genuine issue of material
fact as to whether McFarland reasonably concluded that he had
probable cause to arrest Plaintiff based on the circumstances of
which he was aware at the time of the arrest.

1 (1) Robison reported \$10,000 and Texeira reported that as
2 much as \$20,000 had been stolen from the student body funds during the
3 school year (McFarland Decl. ¶ 40(a));⁸

4 (2) The surveillance camera captured Plaintiff taking money
5 out of the student body fund deposit pouch kept in the third drawer of
6 the file cabinet in the storage room on May 19 and May 20, 2003, and
7 Plaintiff was not observed putting money back inside the pouch on
8 either day (Id. ¶¶ 11, 13, 19, 40(c), (h); McFarland Depo. at 363:18-
9 365:2, 365:22-366:7, 369:22-372:5, 374:23-375:7);⁹

10 (3) Plaintiff was the only person seen on the videotape
11 taking money out of the student body fund deposit pouch kept in the
12 surveilled drawer without putting money into the pouch (McFarland
13 Decl. ¶ 40(i); Zembiec Decl. ¶ 9; McFarland Depo. at 358:10-359:12;
14 380:6-381:20); and

15 (4) There was money missing from the student body fund
16 deposit pouch on May 19 and May 20, 2003 - the days that Plaintiff was
17 seen taking funds out of the pouch without placing money back into the
18 pouch (McFarland Decl. ¶¶ 10-13, 40(d), (h)).¹⁰

19 ⁸ While Plaintiff disputes the accuracy of Texeira's
20 \$20,000 figure, it is undisputed that Texeira told McFarland that
21 approximately \$20,000 was stolen from the investigated student
body funds.

22 ⁹ Plaintiff argues that this fact is disputed because
23 McFarland didn't know what happened to the money she took from
24 the student body fund deposit pouch after she left the storage
25 room. This argument, however, does not controvert McFarland's
declaration that he observed Plaintiff remove money from the
student body fund deposit pouch, but did not observe her
returning money to the pouch.

27 ¹⁰ Plaintiff declares that she never stole money from the
28 District or the student body fund deposit pouch. (Ward Decl. ¶¶
1-2.) But this declaration does not undermine the circumstances

(continued...)

1 Based upon "the totality of the circumstances known to
2 [McFarland], a prudent person could have concluded that there was a
3 fair probability that [Plaintiff] had committed [embezzlement, grand
4 theft, and burglary]." Peng, 335 F.3d at 976 (citation omitted).
5 Since McFarland had probable cause to arrest Plaintiff, his summary
6 judgment motion is granted on this claim.¹¹

7 **3. False Imprisonment**

8 McFarland asserts that Plaintiff's false imprisonment claim
9 is based exclusively on her arrest. (McFarland's Sep. Stmt. ¶ 52.)
10 This has not been controverted by Plaintiff. (Pl.'s Resp. to
11 McFarland's Sep. Stmt. ¶ 52.) Therefore, summary judgment is entered
12 on Plaintiff's false imprisonment claim.

13 **4. Malicious Prosecution**

14 McFarland also seeks summary judgment on Plaintiff's
15 malicious prosecution claim. One of the elements Plaintiff must show
16 to prevail on this claim is that a criminal prosecution was initiated
17 against her. Usher v. City of Los Angeles, 828 F.2d 556, 562 (9th
18

19 ¹⁰(...continued)
20 on which McFarland based his probable cause to arrest Plaintiff.
21 Plaintiff also argues that McFarland (1) did not consider other
22 suspects, (2) failed to conduct a thorough investigation, and (3)
23 was unaware of facts implicating Texeira. (Pl.'s Opp'n at xxx.)
24 These arguments do not negate the probable cause McFarland had to
25 arrest Plaintiff. Further, Plaintiff asserts that McFarland now
concedes that he did not have probable cause at the time of the
arrest (Pl.'s Opp'n Sep. Stmt. ¶ 205), but this assertion
mischaracterizes McFarland's deposition testimony and McFarland's
objection to this mischaracterization is sustained.

26 ¹¹ Plaintiff also argues that her constitutional rights
27 were violated because McFarland did not inform Plaintiff of her
Miranda rights when he interviewed her in Robison's office. This
28 argument fails because it is not based on an actionable claim
under § 1983. Chavez v. Martinez, 538 U.S. 760, 771-772, 789-790
(2003).

1 Cir. 1987) (citing Singleton v. Perry, 45 Cal. 2d 489, 494 (1955)).
2 McFarland submits uncontroverted evidence that no criminal charges
3 were filed against Plaintiff. (Schroeder Decl. ¶ 2; Exh. A.)
4 Therefore, McFarland is granted summary judgment on this claim.

5 B. Sutter County

6 Since McFarland has prevailed on Plaintiff's federal claims,
7 Plaintiff's federal claims against Sutter County "[are] moot because
8 [Plaintiff] suffered no constitutional deprivations." Saman v.
9 Robins, 173 F.3d 1150, 1157 (9th Cir. 1999). Therefore, summary
10 judgment on Plaintiff's federal claims is entered in favor of Sutter
11 County.

12 II. ***Remaining State Law Claims***

13 Since all of Plaintiff's federal claims have been decided,
14 it is determined whether supplemental jurisdiction should continue
15 being exercised over Plaintiff's state law claims. 28 U.S.C.
16 § 1333(c)(3). Plaintiff's remaining state claims against McFarland
17 and Sutter County are for defamation, intentional infliction of
18 emotional distress, and negligence.¹² (2d Am. Compl. ¶¶ 40-57.)

19 Exercise of supplemental jurisdiction is discretionary.
20 Mendoza v. Zirkel Fruit Co., 301 F.3d 1163, 1174 (9th Cir. 2002).
21 "[W]hen deciding whether to exercise supplemental jurisdiction, a
22 federal court should consider and weigh in each case, and at every
23 stage of litigation, the values of judicial economy, convenience,

24
25 ¹² Further, the recent settlement reached by Plaintiff,
26 Robison, Texeira, and the District gives rise to a state
27 contract. See Jessup v. Luther, 277 F.3d 926, 929 (7th Cir.
28 2002) (citing Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S.
375, 378-382 (1994), and stating that "[a] settlement is just
another contract to be enforced in the usual way, that is, by a
fresh suit.").

1 fairness, and comity." City of Chicago v. Int'l Coll. of Surgeons,
2 522 U.S. 156, 173 (1997) (internal citations omitted).

3 [I]n the usual case in which all federal-law
4 claims are eliminated before trial, the
5 balance of factors to be considered under the
6 pendent jurisdiction doctrine . . . will
7 point toward declining to exercise
8 jurisdiction over the remaining state-law
9 claims.

10 Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1988);
11 see Bryant v. Adventist Health Sys./West, 289 F.3d 1162, 1169
12 (9th Cir. 2002) (applying Carnegie-Mellon to supplemental
13 jurisdiction).

14 Since all federal claims have been resolved, this Court
15 declines to continue exercising supplemental jurisdiction over
16 Plaintiff's state law claims "as a matter of comity and to . . .
17 procur[e] for [the parties] a surer-footed reading of applicable
18 [California] law." United Mine Workers of Am. v. Gibbs, 383 U.S.
19 715, 726 (1966). Accordingly, Plaintiff's remaining state law
20 claims are dismissed as of the date on which this order is filed.

21 IT IS SO ORDERED.

22 Dated: July 7, 2005

23 /s/ Garland E. Burrell, Jr.
24 GARLAND E. BURRELL, JR.
25 United States District Judge
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27
28